

CITY/COUNTY LANDFILL

1137928

JOINT POWERS AGREEMENT

JOINT POWERS AGREEMENT ("Agreement"), pursuant to the Joint Powers Agreements Act, §§11-1-1 through 11-1-7, NMSA 1978 (the "JPA Act"), by and between the City of Santa Fe, New Mexico (the "City"), and the County of Santa Fe, New Mexico (the "County"), as of the Effective Date (as defined below).

RECITALS

A. Pursuant to Sections 3-48-1 through 3-48-7 NMSA 1978, the City has the power and authority to dispose of solid waste.

B. Pursuant to Sections 4-56-1 through 4-56-3 NMSA 1978, the County has the power and authority to dispose of solid waste.

C. It is in the best interests of the citizens of the City and the County that the City and the County jointly undertake to exercise their powers to dispose of solid waste, and thereby provide a more efficient and cost-effective method of solid waste disposal to City and County citizens.

D. Therefore, the City and the County desire to purchase, permit, construct, operate and maintain a joint regional solid waste disposal facility (the "Facility"), and to establish and be part of a solid waste management agency that will engage in planning, management, and operation, including, maintenance, expansion and closure, as appropriate, of the Facility.

E. The City and the County desire to equally divide the tasks necessary to acquire the real property on which the Facility will be located (the "Facility Site") and to obtain the

appropriate permits for the Facility from the relevant public agencies and authorities.

F. The City and the County jointly employ a solid waste coordinator (the "Coordinator"); and the position of the Coordinator, including the responsibilities of the Coordinator, shall be as set forth in this Agreement.

G. Accordingly, the City, through its lawful agent, the Coordinator, has contracted with an independent contractor ("Contractor") to prepare and submit a permit application for the Facility (the "Application") to the New Mexico Environment Department ("NMED"); and the Application has been prepared and submitted to NMED.

G. The County has acquired the Facility Site, which is located in the County, and which is more particularly described on Exhibit A to this Agreement.

H. Each of the City and the County is a "public agency" as that term is defined in the JPA Act.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the County agree:

1. The Agency.

1.01. Establishment of the Agency. The City and the County establish the Santa Fe Solid Waste Management Agency (the "Agency"), and delegate to the Agency the power to plan for, operate, construct, maintain, repair, replace, expand, or close the Facility, subject to the terms of this Agreement and subject to applicable law.

1.02. Agency Board of Directors. The Agency shall be managed by a Board

1 of Directors (the "Board") comprised as follows:

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2 (a) Four members, each of whom shall be a City councilor from a different
3 elective district within the City, shall be appointed by the City's Mayor with the approval
4 of the City Council, and each of which City members shall serve for such period as may be
5 determined from time to time by the Mayor with the approval of the City Council; and

6 (b) Four members, each of whom shall be a County commissioner,
7 appointed and approved by the Board of County Commissioners, and each of which County
8 members shall serve for such period as may be determined and approved from time to time
9 by the Board of County Commissioners.

10 1.03. Powers of the Board. Each of the City and the County delegates the
11 following powers and authority to the Agency, and the Board, as the managing authority of
12 the Agency, subject to the following limitations:

13 (a) **Rules and Procedures.** The power to adopt and implement rules and
14 procedures with respect to the operation of the Agency, the Board, and the Facility, which
15 rules and procedures must first be approved by each of the City and the County prior to
16 being implemented;

17 (b) **100-Year Plan.** The power to recommend and implement a 100-year
18 plan for the provision of joint City/County regional solid waste disposal services for the City
19 and County, which plan shall not be formally adopted or implemented unless and until it
20 has been approved by each of the City and the County.

21 (c) **Annual Budget.** The power to recommend an annual budget for the
22 Agency and the Facility, which budget shall be finalized for recommendation after a public

1 hearing, and which budget shall not be formally adopted or implemented unless and until
2 it is approved by each of the City and the County. However, the City and the County shall
3 have only the power to approve or disapprove the annual budget of the Agency; and shall
4 not have the power to modify the annual budget or approve the budget subject to any
5 conditions. If, for any reason, the Agency fails to have an approved annual budget for a
6 fiscal Agency year as of the first day of that year, the annual budget for the prior fiscal
7 Agency year shall be effective for the subsequent fiscal year until such time as an annual
8 budget is adopted and approved for that subsequent fiscal year.

9 (d) **Operation of Facility.** The power to operate, maintain, repair, replace,
10 expand, and close, as appropriate, the Facility in conformity with the relevant, adopted
11 annual budget, which power shall include, without limitation, the powers to employ
12 personnel, enter into contracts, amend, restate, modify or rescind applications and other
13 documents filed with respect to the Facility with a public agency or entity, and perform any
14 other function necessary for, and incidental to, the operation, maintenance, repair,
15 replacement, expansion, and closure of the Facility; provided, however, that the Facility
16 shall not be expanded or closed, and no actions with respect to the expansion or closure
17 of the Facility may be taken without the prior approval of each of the City and the County.

18 (e) **Financing.** The power to apply for grants, loans, financial guarantees,
19 and other financial assistance from private or public, including state and federal, agencies,
20 institutions and entities; provided, however, that the Agency shall not obligate itself on a
21 loan or encumber any of the Agency's or the Facility's property or assets unless and until
22 each of the City and the County approves such loan or encumbrance.

1 (f) **Fees.** The power to collect from the City, the County, and the residents
2 of the City and the County, solid waste disposal fees as may be necessary or appropriate to
3 operate, maintain, repair, replace, expand or close, as appropriate, the Facility, which fees
4 shall be pursuant to a schedule of fees adopted by the Board after a public hearing.

5 1.04. Meetings of the Board. The Board shall have at least one regularly
6 scheduled meeting per calendar quarter, unless more or less frequent meetings are set by
7 the Board pursuant to Agency rules and procedures adopted by the Board in accordance
8 with Section 1.03(a). Each meeting of the Board shall be open to the public. The Agency
9 shall be responsible for publishing notice of each regularly scheduled meeting of the Board
10 at least seven (7) days prior to the meeting date; and for publicly posting notice of all
11 emergency meetings of the Board at least twenty-four (24) hours prior to the emergency
12 meeting. Notice shall include the agenda for the relevant Board meeting. The first regularly
13 scheduled meeting of the Board shall occur no later than ninety (90) days after the Effective
14 Date. A quorum shall be deemed to be present at each Board meeting if a majority of
15 Board members is present. No action shall be taken at any meeting of the Board unless a
16 quorum is present. A simple majority of Board members who are present at a duly called
17 meeting of the Board at which a quorum is present shall act for the Board with respect to
18 all matters brought before the Board at that meeting.

19 1.05. Tie Votes. If the Board reaches a tie vote at any duly called meeting
20 of the Board at which a quorum is present on any action item within the authority of the
21 Board, as provided by this Agreement, then the matter shall be submitted to arbitration in
22 Santa Fe County, New Mexico, pursuant to the New Mexico Arbitration Act, §§44-7-1

1 through 44-7-22 NMSA 1978, and the rules promulgated under that Act, so that the matter
2 is finally decided within sixty (60) days of the date of the Board meeting at which the tie
3 vote occurs. At any time during such sixty (60) day period, the Board may convene a
4 special meeting of the Board for purposes of resolving the issue that caused the tie vote.

5 Arbitration pursuant to this Section 1.04 shall be before a panel of three (3)
6 arbitrators, one (1) selected by members of the Board appointed by the City, one (1) selected
7 by members of the Board appointed by the County, and the third selected by the other two
8 arbitrators. Any award granted or determination made by two of the three arbitrators shall
9 be the final award and decision of the panel and shall be binding upon the Agency, the
10 Board and the parties, to the extent provided in that decision. Costs associated with
11 arbitration shall be deemed to be operating costs of the Agency payable out of the Agency
12 budget. However, if either of the parties incurs costs associated with an arbitration
13 proceeding, such as legal costs, that party shall be solely responsible for the costs incurred
14 by it unless otherwise determined by the relevant arbitration panel.

15 **2. Operational Structure for the Facility.**

16 2.01. Staff Advisory Committee. The City and the County and the Board shall
17 establish a ~~three~~five-member staff advisory committee (the "Staff Committee") which shall
18 be comprised of the Director of Finance for the City, the Director of Finance for the County,
19 the Director of the City's Public Works or Utilities Department, as appropriate, the Director
20 of the County's Public Works or Utilities Department, as appropriate, and the Coordinator.
21 The Staff Committee shall meet at least once a calendar quarter prior to the regularly
22 scheduled meeting of the Board; and shall make recommendations to the Board of the

1 following:

2 (a) Compliance by the Facility with all applicable laws, rules, and
3 regulations, including the conditions imposed under the applicable NMED permit for the
4 Facility;

5 (b) Costs associated with the Facility and preparation of the Agency's
6 annual budget;

7 (c) Any expansion or closure of the Facility; and

8 (d) Such other matters as may be requested from time to time by the Board.

9 2.02. Citizens Advisory Committee. Within ninety (90) days of the Effective
10 Date, each of the City and the County shall appoint two (2) citizens to a five-member
11 citizens advisory committee (the "Citizens Committee"); and the Coordinator shall serve as
12 chair of the Committee. The Citizens Committee shall meet at least once a calendar quarter
13 prior to the regularly scheduled meeting of the Board; and shall make recommendations to
14 the Board of the following:

15 (a) Compliance by the Facility with all applicable laws, rules, and
16 regulations, including the conditions imposed under the applicable NMED permit for the
17 Facility;

18 (b) Costs associated with the Facility and preparation of the Agency's
19 annual budget;

20 (c) Any expansion or closure of the Facility; and

21 (d) Such other matters as may be requested from time to time by the Board.

22 2.03. Use of Facility. Unless otherwise determined by the Board, with the

1 prior approval and consent of the City and the County, only the City and the County may
2 use the Facility; and the Facility shall not be used to service areas outside of the boundaries
3 of the City and the County.

4 **3. Funding.**

5 3.01. Start-Up Costs. Each of the City and the County shall be pay one-half
6 of the amounts required to pay the capital and operating costs associated with the
7 acquisition of, permitting for, construction of, and commencement of operations at, the
8 Facility (the "Start-Up Costs"). What constitutes "Start-Up Costs" with respect to the Facility
9 shall be mutually determined by the parties in accordance with generally accepted
10 accounting principles, consistently applied ("GAAP"). The parties agree that Start-Up costs
11 include, without limitation, the costs associated with acquiring the Facility Site, acquiring
12 property necessary to construct the Facility, permitting the facility, including related
13 consultants costs, and the initial monies necessary to operate the Facility prior to the
14 collection of fees from the Facility users. Each party shall pay its share of Start-Up Costs
15 when and as the same become due or, if the Agency has an adopted annual budget, in
16 accordance with the schedule set forth in that budget.

17 3.02. Operating Costs and Debt Service. In accordance with the approved
18 annual budget for the Agency, the Agency shall expend the revenues (the "Fee Revenues")
19 generated by the collection of fees imposed on the City and the County for the use of the
20 Facility by each to pay for the Agency's operating costs, any expenses associated with
21 service of the Agency's debt, and all capital costs other than Start-Up Costs. If, for any
22 reason, the Fee Revenues are insufficient to pay the costs associated with the Agency's

1 operations, debt service, and capital improvements (other than those covered by Start-Up
2 Costs), the Board promptly shall notify the City and the County; and each of the City and
3 the County promptly shall pay one-half of the deficiency in accordance with the request of
4 the Board. The terms "operating costs", "debt service costs", and "capital costs" have the
5 meanings assigned to them under GAAP.

6 3.03. Revenue Bonds. Without limiting the generality of Sections 3.01 and
7 3.02, funds required for the development, operation, closure and post-closure of the Facility
8 may be generated by the Agency through the issuance of revenue Bonds as authorized by
9 Section 11-1-7 NMSA 1978, or any successor or replacement statute.

10 4. Facility Director/Solid Waste Coordinator.

11 4.01. Director of the Facility. The Coordinator shall be the Director of the
12 Facility. The salary of, and any employment-related benefits for, the Coordinator will be
13 included in the annual budget for the Agency and will be paid, or provided for, by the
14 Agency. The Coordinator shall remain employed by the Agency at the pleasure of the
15 Board.

16 4.02. Duties of Coordinator. The duties of the Coordinator as the Facility
17 director shall include, without limitation:

18 (a) the management and supervision of the operations of the Facility in
19 accordance with the adopted annual budget of the Agency and in compliance with all
20 applicable laws, rules, and regulations, including the conditions imposed under the
21 applicable NMED permit for the Facility;

22 (b) the negotiation, execution and delivery of agreements, contracts,

1 instruments and other documents in furtherance of the operations of the Facility, subject to
2 the adopted annual budget of the Agency and all applicable laws, rules, and regulations,
3 including the conditions imposed under the applicable NMED permit for the Facility;

4 (c) the authority to hire and terminate such personnel as may be required
5 or appropriate to operate and maintain the Facility, subject to the adopted annual budget
6 of the Agency and all applicable laws, rules, and regulations, including the conditions
7 imposed under the applicable NMED permit for the Facility; and

8 (d) the insurance of compliance by the Facility with all applicable laws,
9 rules, and regulations, including the conditions imposed under the applicable NMED permit
10 for the Facility.

11 5. Property.

12 5.01. Property other than the Facility Site. In accordance with its approved
13 annual budget, the Agency may acquire real property and personal property other than the
14 Facility Site and the Facility to implement this Agreement and to operate the Facility. Title
15 to all real and personal property acquired with respect to the Facility, including the Facility
16 Site and the NMED permit for the Facility ("Facility Property"), shall be vested in the
17 Agency. Each of the City, the County, and the Agency shall take all such actions, and shall
18 execute and deliver all such agreements, instruments, and other documents as may be
19 necessary or appropriate to transfer title to all Facility Property to the Agency.

20 5.02. Sale of Facility Property. Upon termination of this Agreement or the
21 conclusion of closure and post-closure activities for the Facility, whichever first occurs, the
22 City and the County delegate to the Board the power and authority to cause the sale of all

1 Facility Property, other than the Facility Site (unless such sale is pursuant to a termination
2 of this Agreement occasioned by the sale of the Facility and its operations), and shall use
3 the proceeds of such sale to wind up the Agency's operations and affairs. Any sale proceeds
4 remaining after the winding up of the Agency's operations and affairs shall be paid to the
5 City and to the County in equal portions unless either of the County or the City failed to
6 make payments required under Article 3, in which case, payment of sale proceeds shall be
7 in proportion to the amounts contributed by the parties under Article 3. The Board may,
8 in its sole judgment and discretion, make in-kind distributions to the parties in lieu of
9 effecting a property sale and distributing the proceeds; and in-kind payments shall be
10 distributed to the City and to the County in equal portions unless either of the County or
11 the City failed to make payments required under Article 3, in which case, such distribution
12 shall be in proportion to the amounts contributed by the parties under Article 3.

13 **6. NMED Permit; Financial Assurances; Liability for Facility.** The City, through its
14 lawful agent, the Coordinator, has contracted with the Contractor to prepare and submit a
15 permit Application for the Facility to the NMED; and the Application has been prepared and
16 submitted to NMED. Each of the City and the County will provide one-half of any financial
17 assurance required with respect to the Facility to obtain a Facility permit from NMED or
18 otherwise to comply with applicable laws, rules and regulations. The Agency shall be liable
19 for all matters and obligations concerning the Facility; provided, however, that if liability
20 arises with respect to the Facility that reasonably can be traced to use of the Facility by
21 either the City or the County or the respective licensees of either the City or the County,
22 then the user that caused, or whose licensees caused, the liability shall be obligated to pay

1 such liability as and to the extent the Agency is unable to pay such liability. The City and
2 the County agree that the Application may be amended, as appropriate, to reflect the
3 division between the parties of the obligation to provide financial assurance and of liability
4 with respect to the Facility and Facility Site set forth in this Article 6.

5 7. Term and Termination.

6 7.01. Term. The date on which this Agreement shall be effective (the
7 "Effective Date") shall be the date on which this Agreement is approved by the New Mexico
8 Department of Finance and Administration. This Agreement shall be effective from the
9 Effective Date through the date of termination, as provided in Section 7.02.

10 7.02. Termination.

11 (a) **By One Party.** Each of the City and the County may terminate this
12 Agreement by delivering notice to the other party and to the Agency of its desire to
13 terminate this Agreement. The Board shall announce its receipt of a termination notice at
14 the regularly scheduled, public meeting of the Board following the day the Board receives
15 the termination notice; and this Agreement will terminate no earlier than eighteen months
16 after the date that the Board notice is announced at a meeting of the Board. Each party
17 shall perform its respective obligations under this Agreement through the date of
18 termination, and thereafter to the extent such obligations properly arise or accrue during the
19 effective period of this Agreement. The terminating party shall have the right to use the
20 Facility for a period of up to five years from the date of termination. Unless otherwise
21 agreed by the City and the County, such post termination use shall be on the terms and
22 conditions set forth in this Agreement. During all times that the Facility is being used jointly

1 by the parties, whether or not this Agreement has terminated, the Board, the Staff Committee
2 and the Citizens Committee shall continue to function as provided in this Agreement.

3 (b) **By Mutual Agreement of the Parties.** The parties, by mutual written
4 agreement executed on behalf of each party, may terminate this Agreement on such terms
5 and subject to such conditions as provided in the mutual written agreement.

6 (c) **Retention of Fiduciary Responsibilities.** Each of the parties
7 acknowledges and accepts that it has a fiduciary responsibility with respect to the operation
8 of the Facility and the Agency. The fiduciary obligation of each party will remain in place,
9 unless otherwise publicly agreed by the parties, for the obligations incurred by the Agency
10 and with respect to the Facility through the date of termination.

11 **8. General Provisions.**

12 8.01. Review. This Agreement and the operation of the Agency and the
13 Facility shall be reviewed and evaluated jointly by the City and the County on every fifth
14 anniversary of the Effective Date. The review and evaluation may include deliberations
15 concerning the viability of establishing a Solid Waste Authority pursuant to the Solid Waste
16 Authority Act, §§74-10-1 through 74-10-100, NMSA 1978, or any successor or replacement
17 statute.

18 8.02. Records and Audit. As provided in Section 11-1-4 NMSA 1978, the
19 Agency shall be strictly accountable for all receipts and disbursements, and shall maintain
20 adequate, complete and correct records and statements pertaining to receipts, disbursements,
21 and other financial matters pertaining to the Facility and the Agency, in accordance with
22 GAAP. Each year, the Board shall cause an annual audit of the Agency and the Facility to

1 be performed by an independent certified public accountant; and the audit shall be provided
2 to each of the City and the County and shall be made available to the public.

3 8.03. Amendment; Effect; Interpretation. This Agreement:

4 (a) may not be modified, amended, supplemented or rescinded except by
5 a written agreement executed by each of the City and the County in the manner in which
6 this Agreement was executed by each of the City and the County.

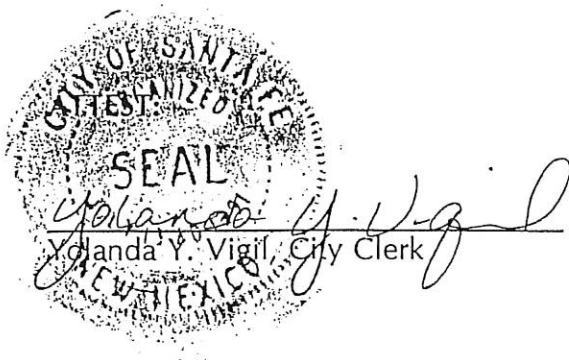
7 (b) incorporates the entire understanding of the parties with respect to the
8 subject matter of this Agreement; and replaces and supersedes all prior agreements and
9 understandings with respect to the subject matter of this Agreement; and

10 (c) is governed by, and shall be construed in accordance with the laws of
11 the State of New Mexico.

12 IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County
13 of Santa Fe, New Mexico, has caused this Agreement to be executed and delivered by its
14 duly authorized representative as of the date specified below.

15 City of Santa Fe, New Mexico

16
17
18 By: Debbie Jaramillo
19 Mayor Debbie Jaramillo
20 Date: _____
21



TO FORM:

1137942

[Signature]
epeler, City Attorney

County of Santa Fe, New Mexico,

By: Laila Grice
Position: _____
Date: _____

[Signature]
ty Clerk

PROVED AS TO FORM:
[Signature]
bunty Attorney



HIS AGREEMENT HAS BEEN APPROVED BY:

State of New Mexico
Department of Finance Administration

By: James C. Turner
Date: 2/8/95

COUNTY OF SANTA FE
STATE OF NEW MEXICO

I hereby certify that this instrument was filed for record on the 9 day of FEB A.D. 19 95, at 3:50 o'clock P.m. and was duly recorded in book 1137 page 928 of the records of Santa Fe County.

942 Witness my Hand and Seal of Office
Jona G. Armijo
County Clerk, Santa Fe County, NM

[Signature]
Deputy



